

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEPHEN KELLEY,

Plaintiff,

vs.

B. WILLIAMS, et al.,

Defendant.

No. CIV S-03-1548 DFL PAN P

ORDER DIRECTING PERSONAL SERVICE

BY THE UNITED STATES MARSHAL

WITHOUT PREPAYMENT OF COSTS

COSTS TAXED TO U.S. MARSHAL

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. By order filed July 30, 2004, the court determined that plaintiff's complaint states a cognizable claim for relief against defendant Williams and ordered plaintiff to provide information for service of process on form USM-285, a completed summons, sufficient copies of the complaint for service, and a notice of compliance. Plaintiff filed the required papers.

On December 27, 2004, however, the U.S. Marshal returned the USM-285 form without executing service on defendant Williams. It appears the U.S. Marshal mailed the appropriate waiver on August 30, 2004. However, typed on the bottom of the form is the sentence, "12/22/04 PER PHONE CONVERSATION W/ATTY. BRUCE BRAVERMAN, MOTION WAS DISMISSED. DOCKET DATE OF 9/28/04 STATES THIS." A copy of the

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1 district court's September 28, 2004 order dismissing one claim from this case was appended to
2 the returned USM-285 form.

3 There is nothing in the record to identify who "atty. Bruce Braverman" is; plaintiff
4 is proceeding pro se and no defendants have appeared in this action. No motion has been filed
5 and no motion has been dismissed in this action.

6 Moreover, the district court's September 28, 2004 order did not dismiss defendant
7 Williams from this action.

8 This court finds that the U.S. Marshal's office failed to comply with this court's
9 August 27, 2004 order directing that service of process be accomplished. Because the U.S.
10 Marshal chose to contact some unknown third party rather than respond directly to the court, the
11 U.S. Marshal has now unduly delayed service of process in this case. Accordingly, the U.S.
12 Marshal will be directed to perform personal service of process on defendant Williams forthwith.
13 The court finds that good cause exists to tax the costs of personal service to the U.S. Marshal
14 rather than to the defendant.

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. The Clerk of the Court is directed to forward the instructions for service of
17 process, a newly issued, completed summons, two copies of the July 23, 2003 complaint, two
18 copies of the August 27, 2004 order, and two copies of this order to the United States Marshal.

19 2. The United States Marshal shall forthwith serve process and a copy of this
20 order upon defendants Doctor B. Williams pursuant to Rule 4 of the Federal Rules of Civil
21 Procedure and 28 U.S.C. § 566(c) and shall command all necessary assistance from the
22 California Department of Corrections (CDC) to execute this order. The United States Marshal
23 shall maintain the confidentiality of all information provided by the CDC pursuant to this order;
24 and

25 3. Within ten days after personal service is effected, the United States Marshal
26 shall file the return of service for the defendant, along with evidence of any attempts to secure a

1 waiver of service of process and of the costs subsequently incurred in effecting service on said
2 defendant. The U.S. Marshal shall bear all costs associated with the personal service of this
3 action.

4 DATED: March 1, 2006.

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7 UNITED STATES MAGISTRATE JUDGE

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